No. 01-1229

Supreme Court, U.S.
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In The

Supreme Court of the United States

PIERCE COUNTY,

Petitioner,

v.

IGNACIO GUILLEN, *et al.*,

Respondents.

PIERCE COUNTY,

Petitioner,

v.

ROBERT AND LUANN WHITMER, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

BRIEF OF RESPONDENTS WHITMER IN OPPOSITION TO WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Washington Supreme Court correctly hold that Congress had power under the Spending, Commerce and Necessary and Proper Clauses to prohibit the discovery and admission into evidence of documents "compiled" for and submitted with applications to obtain federal highway funds, but lacked the power to prohibit the discovery and admission into evidence of documents "collected" for possible use in applications for federal highway funds if those documents were originally prepared for routine state and local purposes?

2. Can a private plaintiff assert the unconstitutionality of a federal statute to defeat a public defendant's reliance on the federal statute as a bar to the discovery and admission of evidence in a state court litigation?

PARTIES TO PROCEEDING

The Washington State Supreme Court decision from which Pierce County petitions for certiorari is a consolidation of two separate cases, ***Guillen v. Pierce County***, Washington Supreme Court No. 68535-5, and ***Whitmer v. Yuk***, Washington Supreme Court No. 69327-7. This brief is filed by plaintiffs Whitmer.

The parties to ***Guillen v. Pierce County*** were:

1. Pierce County, a municipal corporation, defendant;
2. Ignacio Guillen as legal guardian for Jennifer and Alma Guillen, plaintiff;
3. Mariano Guillen as legal guardian for Paulina and Fatima Guillen, plaintiff;
4. The Estate of Clementina Guillen-Alejandre, defendant.

The parties in ***Whitmer v. Yuk*** were:

5. Robert and LuAnn Whitmer, individually and as guardians of Shana, Hanna and Denel Whitmer, plaintiffs;
6. Pierce County, a municipal corporation, defendant;
7. Chin S. and "Jane Doe" Yuk, defendants;
8. Chang and "Jane Doe" Choi, defendants;
9. City of Lakewood, a municipal corporation, defendant;

PARTIES TO PROCEEDING – Continued

10. City of Tacoma, a municipal corporation, defendant.

As noted in the Petition, the Whitmers have settled with Pierce County. App. I. Despite the settlement, the Whitmers remain interested in the outcome of this proceeding pursuant to Supreme Court Rule 12.6.

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OPINIONS BELOW

The Opinion of the Supreme Court of Washington is reported at 144 Wn.2d 696, 31 P.3d 628 (2001), and is reproduced at Petition Appendix ("App.") A. The Order of the Supreme Court of the State of Washington modifying the Opinion and denying further reconsideration is unreported, and is reproduced at App. B. (The changes on reconsideration are not reflected in the copy of the Opinion included as App. A.) The Opinion of the Washington State Court of Appeals in *Guillen* is reported at 96 Wn. App. 862, 982 P.2d 123 (1999), and is reproduced at App. H.

There is no Court of Appeals decision in *Whitmer v. Yuk*. The Supreme Court accepted direct review of the order of the Superior Court.

JURISDICTION

This Court probably lacks jurisdiction because the decision of the Washington Supreme Court is not a "final judgment or decree" under 28 U.S.C. § 1257. That decision vacated and remanded the *Guillen* case for further evidentiary rulings, so *Guillen* is neither final nor ripe. The *Whitmer* case has settled. This Court should either deny review or accept both cases, as discussed *infra*.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The jurisdictional issue arises under 28 U.S.C. § 1257, which provides in relevant part that this Court has jurisdiction to review by certiorari "final judgments or decrees rendered by the highest court of a State in which a decision could be had." Petitioner Pierce County has included the remaining constitutional and statutory provisions in its Appendix J.

STATEMENT OF THE CASE

Petitioner Pierce County correctly notes that the Washington State Court of Appeals declined to address the constitutionality of 23 U.S.C. § 409 because neither the County nor respondent Guillen raised or briefed the issue. Petition at 4. By contrast, the Whitmers challenged the constitutionality of the County's interpretation of § 409 in their motion for an order compelling discovery. The Whitmers argued that denying access to public documents regarding traffic data would violate their 14th Amendment right to due process (U.S. CONST. amend. XIV, § 1) and that such an expansive interpretation of § 409 would exceed the powers delegated to Congress. Clerk's Papers ("CP") 61-64, 242-44. Accordingly, when the State Supreme Court granted direct review in the *Whitmer* case and consolidated *Whitmer* with *Guillen*, the Court also requested that all parties brief the constitutionality of § 409. 31 P.3d at 637, App. A 21.

On August 8, 1996, respondent Denel Whitmer was driving a Volkswagen south on Custer Road in the City of Lakewood, Washington. 31 P.3d at 635. Seventy-fifth

Street intersects with Custer Road, and stop signs require east-west traffic on 75th Street to stop at Custer Road. *Id.* Defendant Chin Yuk, who was traveling east on 75th Street, proceeded into the intersection and struck the right rear of Whitmer's Volkswagen. CP 465-485. The impact spun the Volkswagen around to crash into a utility pole south of the intersection. *Id.* Danel Whitmer and her sister Shana, who was also riding in the car, sustained severe and disabling injuries. CP 541.

The Whitmers' expert civil highway engineer reviewed public traffic accident history records for the intersection, as well as an hourly traffic volume study done by Pierce County. CP 896. The engineer concluded that the intersection violated applicable traffic engineering standards and was not reasonably safe for public travel. CP 896.

The Whitmers brought this action against defendant Yuk for negligently driving his vehicle, defendant Choi, the owner of the vehicle, and defendant City of Lakewood, for failure to adequately repair, maintain, design, sign and adequately control the intersection so that it would not create an unnecessary or unreasonable hazard to motorists. CP 539-40. The area of the intersection had recently been annexed to the City of Lakewood, previously having been a part of unincorporated Pierce County. CP 17. Accordingly, the Whitmers also named Petitioner County as a defendant for failure to adequately construct, repair, maintain, design, sign and control the intersection, and to adequately disclose to defendant Lakewood the unsafe condition of the roadway. CP 540-41.

It has long been the law in Washington State that a county must "exercise ordinary care to keep its public ways in a reasonably safe condition for persons using such ways in a proper manner and exercising due care for their own safety," a rule the Washington Supreme Court has characterized as "well-nigh universal in this country." *Berglund v. Spokane County*, 103 P.2d 355, 358 (Wash. 1940). But the County's duty is limited to protecting against such dangers to the traveling public " 'as may reasonably be anticipated, having due regard to the character of travel, the incidental purposes for which the highway may be lawfully used, and the nature of the possible danger at the point in question.' " 103 P.2d at 359 (quoting 8 Am. Jur. 936, § 38). In order to show that the County failed to exercise reasonable care or should have anticipated the hazard leading to the Whitmers' injury, the Whitmers were required to prove that the County knew or should have known of the particular hazards.

The Whitmers promulgated discovery to determine the knowledge of the County and the City of hazardous conditions at the intersection. The Whitmers asked for motor vehicle traffic accident records and reports by location, documentation relating to any studies in the vicinity of the intersection, hourly traffic counts, evaluations of the accident history at the intersection, information regarding collisions, the speed of vehicles, the need for traffic control devices, and general traffic operations at the intersection. CP 68, 83-84. The County and the City declined to produce any of this information, relying on 23 U.S.C. § 409. CP 71-72, 116-19, 135-42. The Whitmers eventually learned that the County had accident reports for over 50 accidents in the five years before the

Whitmers' collision, 17 vehicle volume summaries, responses to citizen complaint letters, a private traffic impact analysis prepared for a Chevron station, a private traffic impact analysis prepared for a McDonald's restaurant, and other documents. CP 709-10.

The Whitmers moved to compel discovery responses from both the City and the County. CP 36. The City responded that Custer Road is a principal arterial, and therefore a federal aid route eligible for participation in the 23 U.S.C. § 152 "hazard elimination program." CP 11. But the City admitted that it did not apply for federal funding for this intersection, but instead planned, scheduled and funded a reconstruction and realignment of the intersection, including installation of a traffic signal, using state funds rather than federal funds. CP 11-12. The City claimed that it would have used the withheld data if it had chosen to apply for federal funding for the intersection and that it "keeps this data on hand for the purpose of supporting applications for federal-aid highway funds for its Federal Aid Routes among other purposes." CP 12. The County similarly claimed that it collected this information so that it could have applied for federal highway funds if appropriate. CP 17-18.

The trial court initially denied the Whitmers' Motion to Compel Discovery, concluding that § 409 barred discovery. CP 337-38. But after the Washington State Court of Appeals ordered discovery in the *Guillen* case, the Whitmers renewed their motion for discovery. CP 860. The trial court granted the motion and ordered discovery of several documents, which are listed at 31 P.2d at 636-37, App. A 18-20.

In contrast to the Whitmers' expansive document requests, the Guillens limited their document request to avoid the restrictions of § 409. The Guillens' counsel advised the County that, "we are not seeking any reports that were specifically written for developing any safety construction improvement project at the intersection at issue." 31 P.3d at 633, App. A 7. The County eventually identified 20 different documents responsive to the Guillens' request, initially refusing to disclose any of the documents. Guillen CP 112-13.[1] The County subsequently partially withdrew its objection, producing four of the documents – complaints by citizens and a Pierce County Council member requesting corrective measures at the intersection. Guillen CP 139-45. The Guillens then withdrew their request for eleven of the documents. Guillen CP 76. The trial court ordered the County to produce the remaining five documents (including the collection of motor vehicle traffic accident reports prepared by the State Patrol). 31 P.3d at 634, App. A 9-10.

ARGUMENT

A. This Court Probably Lacks Jurisdiction Because *Guillen* Is Not Final Or Ripe, And *Whitmer* Has Settled.

A decision is final when it "ends the litigation on the merits and leaves nothing for the court to do but execute

[1] Document No. 13 is actually a collection of "police traffic collision reports and motor vehicle reports from 1/1/90 prepared by law enforcement agencies." Guillen CP 113.

the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). This occurs only if the decision determines the action (*i.e.*, is not interlocutory) and is not subject to further review by a state tribunal. *Jefferson v. City of Tarant*, 522 U.S. 75 (1997). Exceptions exist (*see Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)), but none of them apply here.

Both *Guillen* and *Whitmer* came to the Washington Supreme Court on discretionary review of an interlocutory discovery order. App. A 14 (*Guillen*); App. A 21 (*Whitmer*). *See generally* Washington Rule of Appellate Procedure 2.3. The Washington Supreme Court did not hold that the County must produce any documents. Instead, the court held that the record was inadequate to make this determination, and remanded to the superior court for further proceedings:

> [O]nly publicly held materials and data that were originally *created* for the identification, evaluation, planning, or development of federally funded safety enhancement projects under 23 U.S.C. §§ 130, 144, or 152 are lawfully privileged under 23 U.S.C. § 409. . . . Because the record contains insufficient facts to apply this standard to all of the disputed items, we vacate the lower courts' rulings and remand for supplementation of the record and further proceedings not inconsistent with this opinion.

31 P.3d at 656, App. A 113-14 (italics in original).

Like the appellant in *Jefferson v. City of Tarant*, Pierce County seeks to bring this case to this Court "too soon" because the decision is "avowedly interlocutory." 522 U.S. at 77, 81. This decision is not "final" in any sense.

Nor does the *Guillen* decision come within any of the limited exceptions to the finality requirement noted in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975): (1) that the federal issue is conclusive, regardless of further state court proceedings; (2) that the federal issue merits review and will survive further state court proceedings; (3) that the federal issue merits review, but will not survive further state court proceedings and will otherwise evade review; and (4) that the federal issue merits review and was finally determined by the state court, further proceedings may resolve the case on independent and adequate state law grounds, this Court's ruling on the federal issue might end the litigation, and important federal interests are at stake. 420 U.S. at 479-83; *see also* Erwin Chemerinsky, FEDERAL JURISDICTION § 10.4 (3rd Ed. 1999). These exceptions generally apply only where the future state proceedings do not involve a further decision of the federal question:

> In most, if not all, of the cases in these categories, these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date, and immediate rather than delayed review would be the best way to avoid 'the mischief of economic waste and delayed justice.'

420 U.S. at 477-78 (quoting *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945)).

None of the *Cox* exceptions applies in *Guillen*. The first and fourth exceptions cannot apply because the federal issue concerning document discovery is not (and cannot be) conclusive of the entire case. The second and third exceptions cannot apply because it is not possible to

know whether the federal issue will survive. The federal issue could become moot if the Superior Court concludes that all of the documents are protected by § 409 even under the decision of the Washington Supreme Court. It could also become moot if the superior court concludes that none of the documents are protected from disclosure under the broadest possible interpretation of § 409 even if the entire statute is constitutional. But the federal issue also might survive.

Petitioner argues that the Washington Supreme Court decision is final based on one sentence dealing with attorney's fees on the Guillens' state law claim. Petition at 6 n.1. The Supreme Court stated, "Lastly, we agree with the Court of Appeals that Guillen is entitled to attorney fees under [Wash. Rev. Code §] 42.17.340(4), since the record suggests that he was entitled to at least four of the five items to which he was denied access in his [Public Disclosure Act] case." 31 P.3d at 655-56, App. A 113. The Court's observation that the record "suggests" that Guillen is entitled to the documents is not a final holding or an order that Pierce County must disclose the documents. Rather, the operative language of the Washington Court's decision is that the lower courts' rulings are vacated and the case remanded "for supplementation of the record and further proceedings not inconsistent with this opinion." *Id.*

The speculative nature of further proceedings regarding the federal issue also raises other justiciability concerns. When, as here, an alleged injury is speculative and may never occur, the issue is not ripe. *See, e.g., Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967); FEDERAL JURISDICTION, *supra*, § 2.4. As the Washington Supreme Court

noted, "the record contains insufficient facts to apply this [federal statutory] standard to all of the disputed items. . . . " As noted above, the federal issue may never arise on remand. *Guillen* is not ripe. 31 P.3d at 656.

Justiciability concerns also arise in *Whitmer*. *Whitmer* is final because it has settled. Normally a settlement renders a case moot. *See, e.g., United Airlines, Inc. v. McDonald*, 432 U.S. 385, 400 (1977) (Powell, J., dissenting); *Dakota Cy. v. Glidden*, 113 U.S. 222 (1885); *but see Erie v. Pap's A.M.*, 529 U.S. 277, 287-88 (2000) (parties cannot manipulate the Court's jurisdiction to insulate a decision from review).

In sum, *Guillen* is not final or ripe, and *Whitmer* may be moot. Neither case alone presents the Court with a final, genuinely adversary issue whose determination by this Court will undoubtedly affect the outcome of the case:

> The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 240-41 (1937) (citations omitted); *see generally*, FEDERAL JURISDICTION, *supra*, § 2.2 ("The Prohibition Against Advisory Opinions"). Thus, unless the Court treats these two cases as one (*i.e.*, accepts both the finality of *Whitmer* and the ongoing controversy of *Guillen*), then the Court

lacks jurisdiction to consider this appeal. If the Court chooses to accept review, then it should accept both cases.

B. The Court Should Decline To Exercise Its Certiorari Jurisdiction Over This First Decision By Any Court To Consider The Constitutionality Of The 1995 Amendment To Section 409, And This First Decision Analyzing Section 409 In Light Of This Court's Analyses In *Lopez* and *Morrison*.

The Court need not exercise its certiorari jurisdiction over this case, but should await additional decisions by other state and federal courts before deciding whether it is important for the Court to review this question. Contrary to the County's assertions, Petition at 7, the decision of the Washington Supreme Court does not conflict with any decision of any other state or federal court. The Washington Supreme Court was the first court to specifically consider the constitutionality of the 1995 amendment to § 409, and the first court to evaluate § 409 in light of this Court's decisions in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995). Since no other case has resolved these issues, there is no conflict with any decision of another state court or United States Court of Appeals, S.Ct. Rule 10(b), or conflict with any relevant decision of this Court. Rule 10(c).

Petitioner County mischaracterizes the decision of the Supreme Court in asserting that it "conflicts with [every] decision of [ ]other state court[s] of last resort [and] of United States Court of Appeals." Petition at 7. The Washington Supreme Court did not question the constitutionality of the pre-1995 § 409 because the parties

assumed its constitutionality: "[I]t is uncontested that Congress had authority to enact § 409 in its *pre*-1995 form, insofar as the privilege was understood to apply only to materials and data created *exclusively* to comply with the federal government's mandates." 31 P.3d at 648 n.26, App. A 75 (italics in original).

The County fails to cite any other case that has expressly considered the constitutionality of the 1995 amendment, and the Whitmers are not aware of any such case. One Louisiana Court of Appeals decision cited by the County considered the constitutionality of the statute as a whole, but did not focus on the 1995 amendment, relying heavily on a pre-1995 case. *Palacios v. Louisiana and Delta RR*, 775 So.2d 698, 703 (La. App. 2000) (relying on *Martinolich v. Southern Pac. Transp.*, 532 So.2d 435, 438 (La. App.), *cert. denied*, 490 U.S. 745 (1988)).

The Washington Supreme Court decision is also the first to consider the constitutionality of § 409 in light of *Morrison* and *Lopez*. It is fair to assume that both federal and state courts will strike down other federal statutes under the *Morrison/Lopez* analysis. It is neither necessary nor desirable for this Court to grant certiorari to review every such decision. Rather, it is preferable for this Court to await more decisions by state courts, providing a richer fund of experience and fact patterns to assist in determining the necessity of review by this Court, and providing breadth and depth for any eventual review.

Petitioner County argues that certiorari is appropriate because the Washington Supreme Court decision "lessens the ability of state government to protect its

traveling public" and jeopardizes the safety of Washington's citizens. Petition at 8, 30. Petitioner's policy argument does not support certiorari jurisdiction. Washington State has made a policy determination that the safety of its citizens is best protected by waiving sovereign immunity and holding governmental units liable to the same extent that private parties are liable. 31 P.3d at 643 n.19, App. A 51. The voters of Washington have emphatically adopted a " 'strongly worded mandate for broad disclosure of public records.' " 61 P.3d at 637, App. A 24 (*quoting Spokane Police Guild v. Liquor Control Bd.*, 769 P.2d 283, 284 (Wash. 1989)). This Court need not concern itself with the wisdom of Washington State's policies of governmental liability and full disclosure of public records.

Ultimately, it is not necessary for this Court to grant the petition for certiorari because the Washington Supreme Court correctly decided the case, as the balance of this answer explains.

C. The County's Supremacy Clause Argument Is Tautological In That A Federal Statute Is Only The Supreme Law Of The Land If It is Made Pursuant To Powers Delegated To Congress By The Constitution.

The County argues that the Washington State Supreme Court violated the Supremacy Clause when it struck down a portion of § 409. Petition 8-13. But, as the Washington Supreme Court noted, "State law cannot be preempted by an unconstitutional federal law." 31 P.3d at 647, App. A 73. The Washington Court reasoned:

The Supremacy Clause, U.S. CONST. art. VI, cl. 2, provides:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

Thus, state judges are constitutionally required only to uphold "laws of the United States *which shall be made in pursuance [of the United States Constitution].*" U.S. CONST., art. VI, cl. 2 (emphasis added). Federal laws that exceed Congress' enumerated constitutional powers are unenforceable in state court – just as they are in federal court – whether or not Congress intended its laws to preempt "the Constitution or laws of any state." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

Id. App. A 74-75 (italics in original) (footnotes omitted).

Petitioner County apparently failed to grasp the significance of the Washington Court's decision, for the County omits from its quotation of the Supremacy Clause the operative phrase "made in pursuance thereof". Petition at 10. Thus, the County fails to understand that the Supremacy Clause is not a source of congressional power. Section 409 can be justified only under the Spending Clause or the Commerce Clause, but as we now show, neither clause authorizes the 1995 amendment.

D. The 1995 Amendment Is Not Authorized By The Spending Clause Because: The Federal Interest In Safe Roads Is Not Sufficiently Related To A Prohibition On Discovery/Admission Of Data And Documents Originally Prepared For Routine State And Local Purposes; And Congress Never Gave The States The Choice Of Accepting Or Rejecting § 409, But Imposed § 409 "Notwithstanding Any Other Provision Of Law."

The 1995 amendment cannot be justified under the Spending Clause. U.S. CONST. art. I, § 8, cl. 1. First, conditions imposed under the Spending Clause must be related to the federal interest in particular national projects or programs. The 1995 amendment prohibits the discovery/admission of documents prepared for routine state and local purposes, but otherwise "collected" for possible use pursuant to 23 U.S.C. §§ 130, 144, or 152. There is no federal interest in prohibiting the discovery/admissibility in state court proceedings of data and documents originally prepared for routine state and local purposes. Second, § 409 is not a Spending Clause statute in any event because it does not purport to give the states the choice of accepting or rejecting particular conditions on the availability of federal funding.

This Court explained Congress' power under the Spending Clause in *South Dakota v. Dole*, 483 U.S. 203 (1987). *Dole* considered the constitutionality of 23 U.S.C. § 158, which directed the Secretary of Transportation to withhold a portion of federal highway funds from states that permitted persons under the age of 21 to purchase and publicly possess any alcoholic beverage. Here, the

Washington Supreme Court quoted this Court's summary of the general restrictions on the proper exercise of Congress' spending power:

> [First,] the exercise of the spending power must be in pursuit of "the general welfare." In considering whether a particular expenditure is intended to serve general public purposes, courts should defer substantially to the judgment of Congress. Second, we have required that if Congress desires to condition the States' receipt of federal funds, it "must do so unambiguously. . . . " Third, our cases have suggested (without significant elaboration) that conditions on federal grants might be illegitimate if they are unrelated "to the federal interest in particular national projects or programs." *Massachusetts v. United States*, 435 U.S. 444 (1978) (plurality opinion). *See also Ivanhoe Irrigation Dist. v. McCracken*, [357 U.S. 275, 295, (1958)], ("[T]he Federal Government may establish and impose reasonable conditions relevant to federal interest in the project and to the over-all objectives thereof"). Finally, we have noted that other constitutional provisions may provide an independent bar to the conditional grant of federal funds.

31 P.3d at 650, App. A 86-87 (*quoting Dole*, 483 U.S. at 207-08 (some citations omitted by Washington Supreme Court)). The Washington Supreme Court quoted the dissenting opinion of Justice O'Connor that Congress "is not entitled to insist as a condition of the use of highway funds that the state impose or change regulations in other areas of the state's social and economic life because of an attenuated or tangential relationship to highway use or

safety." 31 P.3d at 650 n.34, App. A 88 (*quoting Dole*, 483 U.S. at 215 (O'Connor, J., dissenting)).

The Washington Supreme Court found that the 1995 amendment to § 409 failed the third restriction of the *Dole* test, in that the amendment was too attenuated or tangential to the federal purpose:

> We find that no valid federal interest in the operation of the federal safety enhancement program is reasonably served by barring the admissibility and discovery in state court of accident reports and other traffic and accident materials and "raw data" that were originally prepared for routine state and local purposes, simply because they are "collected," for, *among other reasons*, pursuant to a federal statute for federal purposes.

31 P.3d at 651, App. A 92-93 (italics in original).

The Washington Supreme Court's analysis is correct. Petitioner County identifies the purposes of § 409 as facilitating candor in administrative evaluations of highway safety hazards and preventing private tort plaintiffs from using governmentally created records to establish governmental liability for negligence. Petition at 14, 18. The Washington Supreme Court acknowledged that the pre-1995 § 409 facilitated candor by prohibiting the discovery or admission of documents actually compiled by governmental units as part of an application for federal funding for highway safety enhancement. But there is only the most attenuated or tangential relationship between administrative candor and the 1995 amendment prohibiting the discovery/admission of documents or data which are compiled for local or state purposes and

simply happen to be filed in the county engineer's safety enhancement "black hole." 31 P.3d at 644, App. A 56.

For example, state and local police are independently required to prepare the accident reports sought by the Guillens and the Whitmers, and blocking access to those reports has nothing to do with administrative candor. Similarly, County officials will be no less candid in evaluating highway safety enhancements if they must produce private traffic studies performed for a Chevron station and a McDonald's restaurant, citizen complaints, or a letter of complaint from a Pierce County Council member to the County Engineer. Nor is there a sufficiently close relationship between the federal goal of highway safety enhancement and the apparent purpose of § 409 to hinder or defeat private negligence actions against public entities.

Furthermore, the Spending Clause does not authorize § 409 for an even more fundamental reason – § 409 is not a Spending Clause statute. As the Court noted in *Dole*, incident to the spending power, "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.' " *Dole*, 483 U.S. at 206 (*quoting Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980) (Opinion of Burger, C.J.)). The statute at issue in *Dole*, 23 U.S.C. § 158, illustrates the principle. Congress directed the Secretary of Transportation to withhold a portion of federal highway funds from states that failed to adopt a minimum age of 21 for the purchase or public possession of alcoholic beverages. In other words, the 21-year drinking age

was not mandatory; the states had the option of adopting it or not. And Congress did not attempt to impose the minimum drinking age itself, but left it to the states to adopt a minimum drinking age.

But unlike § 158, § 409 does not give the states the option of disclosing or admitting documents and data. Nor does § 409 condition federal funding upon compliance with § 409, or authorize the Secretary of Transportation to withhold a single dollar of federal highway funds. Rather, in § 409 Congress itself prohibited discovery/admission of data and documents without giving the states any choice in the matter. Indeed, Congress expressly overrode the will of the states by prohibiting discovery/admission of data and documents, "Notwithstanding any other provision of law. . . . "

Petitioner County argues that § 409 is a Spending Clause statute because, "nobody made [the state] get into the safety enhancement program" and "because it is clear that participation in the funding program requires acquiescence to the intrusion. . . . " Petition at 20-21 (*quoting Sawyer v. Ill. Cent. Gulf RR Co.*, 606 So.2d 1069, 1074 (Miss. 1992), and *Martinolich*, 532 So.2d at 437). These assertions are demonstrably incorrect. Section 409 applies "Notwithstanding any other provision of law. . . . " The 1995 amendment applies to documents and data "collected for the purpose of identifying, evaluating or planning the safety enhancement of potential accident sites . . . pursuant to . . . [§] 152 of this title . . . of this title. . . . " Section 152 is mandatory like § 409: "Each state *shall conduct and systematically maintain* an engineering survey of all public roads to identify hazardous locations, sections, and elements. . . . " 23 U.S.C. § 152(a)(1) (emphasis

supplied). Nothing about § 152(a)(1) is conditioned in any way on federal funding.

Finally, even if § 409 were conditioned upon state acceptance, Petitioner County is wrong when it states that the Washington Legislature has "accepted the § 409 privilege. . . . " Petition at 10-11. Petitioner relies on Wash. Rev. Code § 47.04.050 through .070. Petition at 11 n.6. These statutes were first enacted in 1917 (Wash. Laws 1917, Ch. 76 §§ 1, 5), and most recently amended in 1961 and 1984. 1961 Wash. Laws, Ch. 13; 1984 Wash. Laws, Ch. 7 §§ 86, 87. The Washington Legislature accepted all conditions on federal funding as of 1961 (and perhaps as of 1984), but the Legislature has never accepted § 409, which was enacted in 1987. *Diversified Investment v. DSHS*, 775 P.2d 947, 949 (Wash. 1989) ("It is well settled in Washington that the Legislature may not constitutionally attempt to adopt future federal law by statute.") Accordingly, even if § 409 were a condition on the receipt of federal funds under the Spending Clause, the Washington Legislature has never accepted the condition and the Spending Clause cannot authorize Petitioner County to withhold the ordered information.

E. The 1995 Amendment Is Not Authorized By The Commerce Clause Because The Discovery/ Admission Of Data And Documents Originally Prepared For Routine State And Local Purposes Does Not Substantially Affect Interstate Commerce Under *Lopez* And *Morrison*.

The Washington Supreme Court carefully weighed under this Court's recent decisions in *Lopez* and *Morrison*

the relationship between the 1995 amendment and interstate commerce. The Washington Supreme Court found this relationship insufficient to justify the 1995 amendment under the Commerce Clause. U.S. CONST. art. I, § 8, cl. 18.

In *Lopez* and *Morrison*, this Court summarized congressional power to regulate three broad categories of activity under the Commerce Clause: channels of interstate commerce; instrumentalities of interstate commerce; and activities that "substantially affect interstate commerce." *Lopez*, 514 U.S. at 558-59; *Morrison*, 529 U.S. at 608-09. The 1995 amendment does not regulate the channels or instrumentalities of interstate commerce, leaving only the issue of whether it regulates activities substantially affecting interstate commerce. *Morrison* and *Lopez* identified four factors that provide the proper framework for analyzing this third category of Commerce Clause regulation: whether the activity involves any sort of economic enterprise; whether the statute contains an express jurisdictional element limiting its reach to activities having an explicit connection with or effect on interstate commerce; whether the statute's legislative history contains express congressional findings regarding the effects on interstate commerce; and whether the link between the regulated activities and a substantial effect on interstate commerce is "attenuated." *Morrison*, 529 U.S. at 610-12.

In *Morrison*, the Court held that the federal Violence Against Women Act of 1994 could not be sustained under the Commerce Clause because it failed each of these tests and because the link between gender-related violence and interstate commerce was too attenuated. Similarly, in

Lopez the Court struck down the Gun-Free School Zones Act of 1990 for the same reasons.

The 1995 amendment cannot be sustained under the Commerce Clause for the same reasons that the *Morrison* and *Lopez* statutes were struck down. First, the discovery or admission of reports and information in a state court adjudicating a state claim is not economic activity within the meaning of the Commerce Clause. State court litigation is not commercial activity, and it is certainly not commercial activity in interstate commerce. To the contrary, litigation of state claims in state courts is by definition a local concern committed to the power of the states. If state court litigation were economic activity under the Commerce Clause, then Congress could presumably regulate every aspect of state court litigation. "Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur." *Lopez*, 514 U.S. at 580 (quoted in *Morrison*, 529 U.S. at 611).

Second, the 1995 amendment lacks any express jurisdictional element that might establish an explicit connection with or effect on interstate commerce. The prohibition of the statute extends to all litigation, whether the litigation arises out of interstate commerce or a purely local auto collision. Section 409 prohibits the discovery/admission of documents compiled or collected for the purpose of § 152. Even § 152 is not limited in any way to interstate commerce. Rather, under § 152 the state must survey "all public roads" and identify dangers to "motorists", "bicyclists" and "pedestrians." 23 U.S.C.

§ 152(a)(1). The vast majority of such hazards plainly have nothing to do with interstate commerce.

Third, Congress failed to make any findings regarding the 1995 amendment's effect on interstate commerce. Congress not only failed to provide findings, but there is no statement of legislative intent regarding § 409. 31 P.3d at 641, App. A 40-41. Despite the lack of any congressional statement, courts deduced a two-fold purpose in the pre-1995 § 409: (1) to deny private plaintiffs a "virtually no-work tool"; and (2) to facilitate candor in administrative evaluations of highway safety hazards. Denying a "no work tool" to private plaintiffs has nothing to do with interstate commerce. The second purpose, facilitating candor in administrative evaluations, is arguably related to interstate commerce in so far as the pre-1995 § 409 precluded discovery/admission of documents expressly compiled for federal funding applications. But the "administrative candor" link was severed by the 1995 amendment, which denied discovery/admission of documents and data generated independently of the federal highway safety funding scheme.

Fourth, linking the 1995 amendment to a substantial effect on interstate commerce requires a chain of reasoning that is too attenuated: local government bodies already generate and receive substantial documents and data relating to road conditions, including police accident reports, traffic counts, citizen complaints, and traffic studies for private business purposes; discovery/admission of these documents will deter local officials from collecting this data, in disregard of their other responsibilities under local and state law; this decreased willingness to collect data and documents will cause local

officials to make poor decisions in prioritizing road safety enhancement projects; federal funds will be spent less efficiently; fewer road hazards will be eliminated; roads will not become less hazardous; interstate commerce will be substantially affected. As the Court observed in *Lopez* and *Morrison*, if such a long and tangential cause-and-effect chain is sufficient to sustain regulations under the Commerce Clause, then Congress could regulate virtually any activity conducted within the state. *Lopez*, 514 U.S. at 563; *Morrison*, 529 U.S. at 613, 615-16. As the Washington Supreme Court concluded:

> It is therefore entirely reasonable that the privilege should cover "reports," "surveys," "schedules," "lists" and "data" that would not exist *but-for* 23 U.S.C. §§ 130, 144, and 152. *See* [*S. Pac. Transp. Co. v.*] *Yarnell*, 890 P.2d [611] at 614 [Ariz. 1995]. However, we fail to see how those vital federal purposes are reasonably served by also barring the discovery and admissibility in state court of routinely prepared state and local traffic and accident materials and data that would exist even had a federal safety enhancement program never been created, such as collision photographs, traffic counts, citizen complaint letters, and "raw data" relating to the history of a local traffic intersection. Such a broad privilege lacks the requisite nexus to § 409's raison d'etre and cannot reasonably be characterized as an "integral part" of the Federal-aid highway system's regulation. *Hodel [v. Indiana]*, 452 U.S. [314] at 328 n.17 [1981].

31 P.3d at 654, App. A 104-05 (italics in original).

F. The Necessary And Proper Clause Does Not Authorize The 1995 Amendment To Section 409.

The Washington Supreme Court also appropriately concluded that although the pre-1995 § 409 might have been necessary and proper in the exercise of the Commerce Clause, the 1995 amendment was not:

> But while the federal government enjoys authority to require state courts to enforce a federal privilege protecting materials that would not have been created but-for federal mandates such as those in §§ 130, 144, and 152, we conclude that it was neither "necessary" nor "proper" for Congress in 1995 to extend that privilege to traffic and accident materials and raw data created and collected for state and local purposes, simply because they are *also* collected and used for federal purposes.

31 P.3d at 654-55, App. A 107-08 (italics in original). The Necessary and Proper Clause adds nothing substantive. U.S. CONST. art. I, § 8, cl. 18. It cannot justify actions otherwise authorized by the Commerce and Spending Clauses.

G. Petitioner's 10th Amendment Red Herring Ignores The Only Standing Analysis Applicable Here, But Plaintiffs Suffered A Personal Injury Caused By The 1995 Amendment And Redressable In State Court In Any Event.

Petitioner ignores the only standing analysis applicable here. Standing is a limitation on federal court power. *See, e.g., Allen v. Wright*, 468 U.S. 737, 750 (1984) ("The case-or-controversy doctrines state fundamental limits on

federal judicial power in our system of government."); *Flast v. Cohen*, 392 U.S. 83, 99 (1968). Therefore, the federal standing doctrines do not apply in state courts. *See, e.g., ASARCO, Inc. v. Kadish*, 490 U.S. 605, 617 (1989) ("We have recognized often that the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law, as when they are called upon to interpret the Constitution or, in this case, a federal statute." (citations omitted)).

The plaintiffs plainly had "standing" to sue in Pierce County Superior Court, seeking redress for the injuries they suffered in two car crashes. Assuming finality and ripeness, this Court has jurisdiction over appeals from a state's highest court in such cases. 28 U.S.C. § 1257. There is no standing problem here.

Equally plainly, plaintiffs had "standing" (actually, the right) to litigate Petitioner County's claim that § 409 prevented discovery of relevant documents in their tort actions. "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Flast*, 392 U.S. at 99. Again, a party seeking redress for injuries negligently inflicted by a defendant has standing to sue in state court, and the due process right to proper discovery.

But assuming for argument's sake that federal justiciability requirements applied in state courts, then these plaintiffs were personally injured by the 1995 amendment's unconstitutional bar to civil discovery, an injury

properly redressed by the Washington Supreme Court's ruling. *See, e.g., Allen*, 468 U.S. at 751 ("A plaintiff must allege [1] personal injury [2] fairly traceable to the defendant's allegedly unlawful conduct and [3] likely to be redressed by the requested relief"). These plaintiffs have standing.

As the County acknowledges, these plaintiffs did not "assert" the 10th Amendment, but rather relied on the Commerce and Spending Clauses. First, after Pierce County asserted the 1995 amendment to § 409 as an objection to plaintiffs' discovery requests, plaintiffs argued that the Commerce Clause did not authorize this amendment. It is well established that individual plaintiffs have standing to assert, as here, that the Commerce Clause does not authorize a particular federal statute that harms the individual in a specific way. *See, e.g., Morrison, supra* (defendants successfully challenged Congress' power to enact 42 U.S.C. § 13981 under Commerce Clause); *Lopez, supra* (defendant successfully challenged Congress' power to enact 18 U.S.C. § 922(q)(1)(A) under Commerce Clause). The 10th Amendment adds nothing to this argument, and no standing problems exist in this case.

It is also well established that an individual challenging the constitutionality of a federal statute in federal court "must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Frothingham v. Mellon*, 262 U.S. 447, 488 (1928). As a result, individuals normally have more difficulty establishing

standing to litigate whether the Spending Clause authorizes Congress to adopt a particular condition on disbursements to the states. Such challenges are typically brought by states. *See, e.g., Dole, supra.* If an individual wished to challenge (for instance) Congress's condition requiring a higher drinking age, then he would have to challenge the state's adoption of the statute raising the drinking age (the action that actually caused his alleged "harm"), rather than Congress's imposition of the condition.

But here, the Whitmers and Guillens are in a unique position. They were directly injured by the 1995 amendment because, as noted above, Congress did not require the states to adopt a law as a condition to funding, or even seek the state's acceptance of the condition, but rather directly imposed a specific bar to discovery in all state courts, "[n]otwithstanding any other provision of law . . . ." 23 U.S.C. § 409. Congress has thus directly attempted to deprive these plaintiffs of discoverable information relevant to proving their claims. Again, if the standing requirements (personal injury, causation and redressability) apply, then they are met in this case.

Petitioner County places undue reliance on *dicta* (not a "ruling") from *Tennessee Electric Power Co. v. Tennessee Valley Auth.*, 306 U.S. 118 (1939) ("*TEPC*"). There, several power companies brought a 10th Amendment challenge to the statute that created the Tennessee Valley Authority. This Court followed its precedents holding that damage incident to lawful competition is *damnum absque injuria*. 306 U.S. at 140. In the language of current standing doctrine, the *TEPC* plaintiffs lacked standing because

they suffered no cognizable personal injury.[2] The Court went on to say that competition is not actionable even when the competitor is a federal agency, unless the state itself objects. 306 U.S. at 143-44. This *dicta* is not binding, however, and does not apply where, as here, the plaintiff suffers a personal injury caused by Congress and redressable in state court.

In sum, federal justiciability doctrines do not apply in state courts, and these plaintiffs plainly had standing to sue. Even if those doctrines apply, these plaintiffs suffered personal injuries (deprivation of discoverable evidence relevant to proving their claims) reasonably traceable to the 1995 amendment, and redressable by the state courts' decision invalidating the 1995 amendment. The 1995 amendment is unconstitutional because it is not authorized by the Commerce or Spending Clauses.

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[2] Pierce County also relies on several decisions in which other courts, like *TEPC*, held that individuals who suffer no personal injury have no standing to assert the 10th Amendment. *Mountain States Legal Fnd. v. Costle*, 630 F.2d 754, 761-72 (10th Cir.), *cert. denied*, 450 U.S. 1050 (1980) (only cognizable injury is to state – which denied any injury – not to the plaintiffs); *Vermont Assembly of Home Health Agencies, Inc. v. Shalala*, 18 F. Supp. 2d 355, 371 (D. Vt. 1988) (same).

CONCLUSION

For the foregoing reasons, the Whitmers respectfully ask the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted this 27th day of March 2002.

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APPENDIX K

The Honorable Rudolph J. Tollefson
Department #2

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

ROBERT and LuANN WHITMER, husband and wife, individually, and as the guardians of SHANA WHITMER, an incapacitated person, HANNAH WHITMER, a minor, and DENEL WHITMER, an incapacitated person, Plaintiffs, vs. CHIN S. YUK and SUN YEONG YUK, husband and wife, and the marital community composed thereof, and CHANG CHOI; and the CITY OF LAKEWOOD, a municipal corporation; PIERCE COUNTY, a municipal corporation; and CITY OF TACOMA, a municipal corporation, Defendants.	No. 97-2-07236-6 ORDER LIFTING STAY, COMPELLING DISCOVERY AND CONTINUING DEFENDANTS CITY OF TACOMA'S MOTION FOR SUMMARY JUDGMENT (Filed Feb. 11, 2000)

THIS MATTER having come on before the undersigned Judge of the Pierce County Superior Court upon the Plaintiffs' Motion to Lift Stay, Compel Discovery, and to Continue the City of Tacoma's Motion for Summary Judgment; and the parties being represented by counsel; and the Court having reviewed the responsive pleadings of the parties and the exhibits and records on file herein, and being fully advised; it is hereby

~~**ORDERED that the stay of proceedings is hereby lifted, and it is further**~~ [**ORDERED** that the stay of proceedings will continue until the Supreme Court accepts or rejects review of this matter /s/ RJT, RHB, KLK, HTD, JFH]

ORDERED ~~that the Defendant City of Tacoma's Motion for Summary Judgment currently scheduled for hearing on February 11, 2000 is hereby continued until such time as further discovery is completed; and it is further~~ [/s/ RJT, RHB, KLK, HTD, JFH]

ORDERED that the Plaintiffs' Motion to Compel Discovery is granted, and the Defendants Pierce County and City of Lakewood are ordered to turn over the following documents to plaintiffs [subject to the provisions hereinabove. /s/ RJT, RHB, KLK, HTD, JFH]

(See Exhibits "A" and "B" attached hereto and made a part hereof).

DATED this 11 day of February, 2000.

/s/ Rudolph Tollefson
HON. RUDOLPH J. TOLLEFSON

[THE COURT FURTHER CERTIFIES THAT THIS ORDER INVOLVES A CONTROLLING QUESTION OF LAW AS TO WHICH THERE IS SUBSTANTIAL GROUND FOR A DIFFERENCE OF OPINION AND THAT IMMEDIATE REVIEW OF THIS ORDER MAY MATERIALLY ADVANCE THE ULTIMATE DETERMINATION OF THE LITIGATION. /s/ RJT, RHB, KLK, HTD, JFH]

Presented by:
DAVIES PEARSON, P.C.

By: /s/ James B. Lynch
WSB# 22531 for Mr. Benedetti
RICHARD H. BENEDETTI
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Attorneys for Plaintiffs Whitmer

STRITMATTER KESSLER WHELAN WHITHEY

By: /s/ Keith L. Kessler
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Attorneys for Plaintiff Shana Whitmer

/s/ [Illegible]
/s/ Harold T. Dodge

/s/ Jeff F. Hale attorney for City of Tacoma

EXHIBIT #A

WHITMER
DOCUMENTS CLAIMED TO BE
PRIVILEGED UNDER 23 U.S.C. § 409

Claimed by Pierce County:

1. Multi-file Inventory Listing Detail: Computer Print out of accident information that would be retained in computer file

2. Accident Reports – Dated:
   9/24/90, 7/21/93, 1/6/96, 6/11/90, 6/9/93, 3/28/90, 5/14/93, 11/13/91, 12/17/94, 9/25/92, 10/11/94, 4/24/92, 9/20/94, 7/31/90, 8/31/94, 4/2/91, 4/29/94, 12/11/92, 2/17/94, 9/25/92, 1/21/94, 9/3/92, 12/9/95, 7/27/92, 12/1/95, 4/24/92, 9/19/95, 3/13/92, 8/22/95, 2/25/92, 3/20/95, 9/24/93, 2/12/95, 4/2/93, 3/11/93, 4/7/93, 10/4/95, 10/6/95, 1/29/93, 4/20/92, 6/2/93, 11/23/94, 12/10/94, 1/27/90, 2/5/90, 4/7/93, 4/30/92, 5/7/92, 5/22/90, 8/4/92, 8/30/90, 11/1/91, 11/15/90, 11/21/91.

3. Computer Printout Pages 1990-1996; from 8/8/97 and 7/16/97; containing summary information on dates of accidents

4. Response to citizen complaint letter: original letter from Margaret Smith to Thomas Ballard; response letter, date 2/8/91 from Thomas Ballard to Margaret Smith concerning light and fixing cost of light at approximately $125,000

5. Tables 1-24 – Vehicular Traffic Evaluations and Traffic Signal Warrant Evaluation

6. Pierce County Public Works Signal Warrant Form

7. Vehicle Volume Summaries – Dated:
   12/11/90, 8/1/88, 11/7/95, 11/8/95, 9/30/93, 7/18/89, 9/21/95, 9/20/95, 6/7/94, 10/14/93, 7/14/92, 10/25/90, 7/18/91, 7/20/89, 7/25/9, [sic] 11/28/95, 7/14/92

8. State of Washington Urban Arterial Board Project Prospectus, revised 1/6/69

9. Pierce County Six-year Plans – 1990-1996

Claimed by City of Lakewood

1. Memo; 5/14/96; from Rory Grindley, Associate Traffic Engineer; to Bill Larkin, Engineering Manager, City of Lakewood; regarding Pierce County Public Works and Utilities Transportation Service Traffic Division Review of McDonald's Restaurant Traffic Impact Analysis

2. Private Traffic Impact Analysis for Chevron at 74th Street West and Lakewood Drive; 2/13/96

3. 75th Street W. and Custer Road (Lakewood Drive) Intersection Evaluation (augmenting Private Traffic Impact Analysis, supra #2.); 4/10/96

4. Private Traffic Impact Analysis for McDonald's at 75th Street W. and Lakewood Drive; 4/30/96

5. Handwritten extract of accident data for 75th Street W. and Custer Road and for the Curve between 74th Street West and 75th Street West for the years of 1994, 95, and 96.

6. Fax cover sheet; 2/12/97; from Grindley; to Larkin; transmitting Pierce County Level of Service calculations for 74th Street West and Lakewood Drive plus "assumed signal timing info used."

7. Handwritten notes and diagram of Custer Road at Lakewood Drive to 75th Street W. showing "ADT COUNTS PM Peak". 1 page.
8. City of Lakewood Six Year Comprehensive Transportation Program: Amended 1997 & 1998 – 2003.
9. Documents associated with the Urban Arterial Trust Account (UATA)
   - Urban Program Application: including "Transporation Improvement Board Funding Application Arterial Inventory Sheet" (two types: representing before and after the project).
   - Attachment A – Accident Reduction & Annual Benefit" pertaining to intersection of 75th Street W. and Lakewood Drive
   - "Attachment B – Annual Benefit Summary Sheet"
   - "Transportation Improvement Board controlled Intersection Data Continuation Sheet:" (two types: one pertaining to the intersection of 75th Street W. and Custer Road and one pertaining to both that intersection and the intersection of Lakewood Drive and Custer Road)

EXHIBIT #B

PIERCE COUNTY adv. Whitmer
Our File No. W-97-14473

PIERCE COUNTY DOCUMENTS NOT PRODUCED

4/18/74 letter from citizen to Pierce County

10/15/71 letter from William Thorton, Pierce County Public Works to Fred Weedon, Deputy Prosecuting Attorney

9/9/82 letter from Frederick Anderson, Pierce County, to citizen

6/29/98 note from Bruce to Peg

1969 Cross Reference Sheet

4/27/95 letter from Jim Ellison, Traffic Engineer, to Clover Park School District

10/29/92 letter from Jim Ellison, Traffic Engineer, to citizen

10/13/92 letter from citizen to Jim Ellison

3/21/91 letter from Tom Ballard to citizen

1/23/91 letter from citizen to Joe Stortini

2/8/91 letter from Tom Ballard to citizen

11/1/88 letter from business/citizen to Messrs. Wagar and Ellison

6/3/88 letter from Tom Ballard to citizen

5/18/88 letter from citizen to Tom Ballard

4/15/86 letter from Jim Ellison to Mike Pan, with attachment

4/25/84 memo from Tom Ballard to Fred Anderson

4/24/84 memo from Jim Ellison to Tom Ballard

10/94 Cross Reference Sheet

Undated Cross Reference Sheet

6/22/60 Cross Reference Sheet

Four undated photographs of Custer Road

8/31/72 letter from C.L. Mitchell to Department of Highways

11/29/61 letter from Keith Jones, County Engineer, to citizen

11/21/61 letter from Lee, Krilich, Anderson to T.F. Jones

5/19/61 letter form [sic] citizen to Keith Jones

5/10/61 memo from Keith Jones to citizen

Undated Custer Road bid sheet

10/1/71 letter from attorney to Fred Weedon & George Tyler

Undated handwritten letter from George to Bill

9/8/70 letter from Wm. R. Thorton, Public Works Director, to citizen

8/11/70 letter from citizen to Wm. R. Thorton

8/13/70 letter from Brewer Thompson to citizen

8/11/70 letter from citizen to Brewer Thompson

8/3/94 letter from citizen to Jim Ellison

8/1/94 letter from Jim Ellison to citizen

8/1/94 letter from Jim Ellison to business/citizen

7/6/94 letter from citizen to Pierce County Sheriff's Office

2/8/91 letter from Tom Ballard to citizen

Traffic Signal Priority Array Summary

12/7/83 letter from citizen to Frederick Anderson

10/3/83 letter from Frederick Anderson to citizen

10/3/83 letter from Frederick Anderson to citizen

7/28/83 letter from citizen to Booth Gardner

8/3/83 letter from Booth Gardner to citizen

8/1/83 memo from Dave to Fred Anderson

8/3/83 letter from Booth Gardner to citizen

8/3/83 memo from Dave to Fred Anderson

7/29/83 letter from citizen to Booth Gardner